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EXAMINER

SHELEHEDA, JAMES R

ART UNIT PAPER NUMBER

2623

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/712,790

Applicant(s)

ELDERING ET AL.

Examiner

James Sheleheda

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-18, 60 and 62-93 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-18, 60 and 62-93 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/6/06, 8/24/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 7, 8, 10, 12-18, 60 and 62-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond et al. (Zigmond) (of record) in view of Guyot et al. (Guyot) (6,119,098) (of record) and Doherty (US 2003/0200128 A1) (of record).

As to claim 1, Zigmond discloses a method of selectively inserting advertisements into a programming stream (column 4, lines 7-15) at different receiving nodes of a communications network (households receiving broadcast television signals; column 7, lines 13-36), said method comprising:

(a) transmitting the programming stream from a central location (Fig. 3, content provider, 50) to one or more receiving nodes (households, 56 receiving broadcast signals; column 7, lines 1-12);

(b) storing advertisements (column 17, lines 21-28 and column 11, lines 31-49) at a node of said network (storing ads in ad repository, 86; Fig. 5, column 15, lines 24-34), each advertisement being previously matched to one or more subscribers associated with one of said receiving nodes (wherein only ads selected by the ad selection criteria

for a subscriber are sent to memory and stored; Fig 5; column 15, lines 16-23 and column 11, lines 31-49);

(d) selling locations to third parties (wherein third party advertisers contract to have their ads inserted to consumers; see Zigmond at column 8, lines 22-29).

(e) determining at each of said receiving nodes (through a received trigger), one or more intervals in said programming stream within which advertisements may be inserted (column 15, lines 35-44);

(g) inserting said advertisement into said programming stream at said receiving node within said determined one or more intervals (column 15, lines 57-65).

While Zigmond discloses information determining the next advertisement to inserted (selection criteria; Fig. 6, step 110), corresponding to a subset of said plurality of receiving nodes (corresponding to a particular viewer; column 11, lines 35-49) and responsive to said determination, retrieving the next advertisement (Fig. 6, step 110; column 17, lines 23-32), wherein the order of the advertisements is independent of the timing of the determined one or more intervals (wherein ads are inserted based upon time independent information, such as program content, ratings and user preferences, habits and demographics; column 12, line 44-column 13, line 12, column 13, lines 48-58 and column 14, lines 13-58), he fails to specifically disclose storing a queue, said queue comprising an ordered list of advertisement resource locators (ARLs), each of said ARL's comprising data disclosing a location of a corresponding advertisement, retrieving from said queue one of said ARLs in accordance with said order and wherein the sold locations at least partially determine the order of the ARLs in said ordered list.

In an analogous art, Guyot discloses a system for displaying targeted advertising (Fig. 1; column 3, lines 13-16) wherein a queue of targeted advertisements is transmitted from a server to a subscriber system (column 5, lines 18-22 and column 4, lines 29-39) containing address locations advertisements (column 4, lines 49-50) and advertisements are then selected from the ad queue for display (column 7, lines 58-62) wherein the advertisers are charged for inclusion of their ads within the queue (column 10, lines 23-29) for the typical benefit of allowing the system to better control the output and updating of advertisements (column 3, lines 49-54, column 5, lines 18-27 and column 6, line 64-column 7, line 11).

Additionally, in an analogous art, Doherty discloses a system for displaying targeted advertising (Fig. 1; paragraph 25, lines 1-6) wherein a scheduler (140, Fig. 1) will assemble an ordered list (the schedule; paragraph 29) of references (or ARLs) pointing to advertisements (paragraph 28, lines 3-7 and paragraph 29), based upon advertisement priorities (paragraph 40), to determine the order in which advertisements are to be displayed (paragraph 38) wherein locations in the ordered list are sold to advertisers (advertisers pay a fee for their ads to be included and displayed; paragraphs 40, 46, 48 and 49) and wherein the sold locations at least partially determine the order of the ARLs in said ordered list (wherein advertisers pay to increase their ad priority and playback time; paragraphs 40, 46, 48 and 49) for the typical benefit of allowing the system provider additional revenue while allowing advertisers to control the display of their advertisement as desired (paragraphs 40, 46, 48 and 49).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond's system to include storing a queue, said queue comprising an ordered list of advertisement resource locators (ARLs), each of said ARLs comprising data disclosing a location of a corresponding advertisement and retrieving from said queue one of said ARLs in accordance with said order, as taught by Guyot, for the typical benefit of allowing the system to better control the output and updating of advertisements.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond and Guyot's system to include wherein the sold locations at least partially determine the order of the ARLs in said ordered list, as taught by Doherty, for the typical benefit of allowing the system provider additional revenue while allowing advertisers to control the display of their advertisement as desired.

As to claim 2, Zigmond, Guyot and Doherty disclose wherein said programming stream includes indicators that identify the start of an avail (encoded trigger signal; see Zigmond at column 15, lines 45-52) in said programming stream for insertion of an advertisement (see Zigmond at column 15, lines 35-37), wherein step (e) includes detecting said indicators (see Zigmond at column 15, lines 57-61) and wherein step (g) includes inserting said advertisement into said avail (see Zigmond at column 15, lines 57-61).

As to claim 7, Zigmond, Guyot and Doherty disclose wherein said queues are stored locally at said receiving nodes to which they correspond (see Guyot at column 4, lines 28-38).

As to claim 8, Zigmond, Guyot and Doherty disclose wherein step (a) includes receiving a plurality of channels of television programming (see Zigmond at column 7, lines 1-12 and 14-28) and selecting one of said channels (the currently tuned program channel; see Zigmond at column 13, lines 14-39 and column 15, lines 45-49), wherein step (e) includes detecting said avails in said selected channel (triggers in the current channel; see Zigmond at column 15, lines 45-52) and wherein step (g) includes inserting said advertisements into said avails in said selected channel (inserting ads into the current monitored stream; see Zigmond at column 15, lines 57-65).

As to claim 10, Zigmond, Guyot and Doherty disclose wherein step (b) includes storing said advertisements at said receiving node (ad repository, 86 in ad insertion device 80; see Zigmond at Fig. 5, column 15, lines 24-34).

As to claim 12, Zigmond, Guyot and Doherty disclose wherein step (d) includes selling the locations in said queues to advertisers (wherein third party advertisers contract to have their ads inserted to consumers; see Zigmond at column 8, lines 22-29).

As to claim 13, Zigmond, Guyot and Doherty disclose wherein step (d) includes selling the locations in said queue (selling a predetermined number of ad exposures; see Zigmond at column 8, lines 22-29) based at least partially on a repetition rate within said queue of said sold locations (wherein the ad is repeated a set number of times within a given time period; see Zigmond at column 13, lines 40-45).

As to claim 14, Zigmond, Guyot and Doherty disclose wherein said repetition rate is non-linear (wherein the ad is blocked after a set number of presentations, which stops the ad from repeating at the same rate, to prevent frustration from viewers; see Zigmond at column 13, lines 40-47).

As to claim 15, Zigmond, Guyot and Doherty disclose (h) recording a portion of said stream for subsequent playback (see Zigmond at column 3, lines 9-12 and column 14, lines 1-12).

As to claim 16, Zigmond, Guyot and Doherty disclose wherein step (g) includes inserting said advertisements into said stream as the stream is being recorded (wherein the system inserts ads into the received stream being recorded whenever the indicator appears; see Zigmond at column 14, lines 1-12 and column 15, lines 45-65).

As to claim 17, Zigmond, Guyot and Doherty disclose wherein step (g) includes inserting said advertisements into said stream when the stream is played back

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(replacing older ads with newer ones in the recorded material; see Zigmond at column 14, lines 1-12).

As to claim 18, Zigmond, Guyot and Doherty disclose wherein step (g) includes inserting said advertisements into said stream (the current video stream being received and displayed) between the time the stream is recorded and the time it is played back (when a program is recorded and played back at a later time, such as the next day, the system would be continuing to insert ads into the received video stream during that time period; see Zigmond at column 17, lines 21-32).

As to claim 60, Zigmond discloses a method of inserting advertisements into programming stream (column 4, lines 7-15) in a communications network (Fig. 3; column 7, lines 13-36), said method comprising:

(a) transmitting said programming stream from a central location (Fig. 3, content provider, 50) to one or more receiving nodes (households, 56 receiving broadcast signals; column 7, lines 1-12);

(c) selling locations to third parties (wherein third party advertisers contract to have their ads inserted to consumers; see Zigmond at column 8, lines 22-29);

(d) detecting one or more intervals in said programming stream (through a received trigger) within which advertisements may be inserted (column 15, lines 35-44);

(e) inserting advertisements into said programming stream within said detected intervals (column 15, lines 57-65), wherein the order of the advertisements is

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independent of the timing of the determined one or more intervals (wherein ads are inserted based upon time independent information, such as program content, ratings and user preferences, habits and demographics; column 12, line 44-column 13, line 12, column 13, lines 48-58 and column 14, lines 13-58).

While Zigmond discloses information determining the next advertisement to inserted (selection criteria; Fig. 6, step 110) and inserting advertisements in accordance with said information (Fig. 6, step 110; column 17, lines 23-32), wherein the order of the advertisements is independent of the timing of the determined one or more intervals (wherein ads are inserted based upon time independent information, such as program content, ratings and user preferences, habits and demographics; column 12, line 44-column 13, line 12, column 13, lines 48-58 and column 14, lines 13-58),

he fails to specifically disclose storing one or more queues, each queue associated with one or more subscribers, comprising an ordered list of advertisements and inserting said unscheduled advertisements in accordance with said ordered list and wherein the sold locations at least partially determine the order of the ARLs in said ordered list.

In an analogous art, Guyot discloses a system for displaying targeted advertising (Fig. 1; column 3, lines 13-16) wherein a queue of targeted advertisements is transmitted from a server to a subscriber system (column 5, lines 18-22 and column 4, lines 29-39) containing address locations advertisements (column 4, lines 49-50) and advertisements are then selected from the ad queue for display (column 7, lines 58-62) for the typical benefit of allowing the system to better control the output and updating of

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advertisements (column 3, lines 49-54, column 5, lines 18-27 and column 6, line 64-column 7, line 11).

Additionally, in an analogous art, Doherty discloses a system for displaying targeted advertising (Fig. 1; paragraph 25, lines 1-6) wherein a scheduler (140, Fig. 1) will assemble an ordered list (the schedule; paragraph 29) of references (or ARLs) pointing to advertisements (paragraph 28, lines 3-7 and paragraph 29), based upon advertisement priorities (paragraph 40), to determine the order in which advertisements are to be displayed (paragraph 38) wherein locations in the ordered list are sold to advertisers (advertisers pay a fee for their ads to be included and displayed; paragraphs 40, 46, 48 and 49) and wherein the sold locations at least partially determine the order of the ARLs in said ordered list (wherein advertisers pay to increase their ad priority and playback time; paragraphs 40, 46, 48 and 49) for the typical benefit of allowing the system provider additional revenue while allowing advertisers to control the display of their advertisement as desired (paragraphs 40, 46, 48 and 49).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond's system to include storing a queue, said queue comprising an ordered list of advertisement resource locators (ARLs), each of said ARLs comprising data disclosing a location of a corresponding advertisement and retrieving from said queue one of said ARLs in accordance with said order, as taught by Guyot, for the typical benefit of allowing the system to better control the output and updating of advertisements.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond and Guyot's system to include wherein the sold locations at least partially determine the order of the ARLs in said ordered list, as taught by Doherty, for the typical benefit of allowing the system provider additional revenue while allowing advertisers to control the display of their advertisement as desired.

As to claim 62, Zigmond, Guyot and Doherty disclose wherein the advertisements in the queues are independent of the substance programming stream (wherein the advertisements to be displayed are dependent upon the user's viewing habits or demographics; see Zigmond at column 13, lines 7-13, column 14 lines 13-58 and column 17, lines 21-26).

As to claim 63, Zigmond, Guyot and Doherty disclose wherein each of the one or more queues is associated with a channel in the programming stream (wherein the advertisements to be displayed, and therefore the queue holding them, are dependent upon, and therefore associated with, the current channel being viewed; see Zigmond at column 12, lines 47-53).

As to claim 64, Zigmond, Guyot and Doherty disclose wherein step (a) includes transmitting a plurality of channels within the programming stream and selecting one of said channels (see Zigmond at column 11, lines 15-18), and wherein step (e) includes

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inserting the advertisements (see Zigmond at column 15, lines 57-65) from a queue associated with the selected channel (wherein the advertisements to be displayed, and therefore the queue holding them, are dependent upon, and therefore associated with, the current channel being viewed; see Zigmond at column 12, lines 47-53) into the detected intervals in the selected channel (see Zigmond at column 15, lines 57-65).

As to claim 65, Zigmond, Guyot and Doherty disclose wherein the queues are stored at the subscriber node (see Guyot at column 4, lines 28-38).

As to claim 66, Zigmond, Guyot and Doherty disclose wherein the locations are sold to advertisers (wherein third party advertisers contract to have their ads inserted to consumers; see Zigmond at column 8, lines 22-29).

As to claim 67, Zigmond, Guyot and Doherty disclose wherein the locations are sold (selling a predetermined number of ad exposures; see Zigmond at column 8, lines 22-29) based at least partially on a repetition rate within the queue of the sold locations (wherein the ad is repeated a set number of times within a given time period; see Zigmond at column 13, lines 40-45).

As to claim 68, Zigmond, Guyot and Doherty disclose wherein said repetition rate is non-linear (wherein the ad is blocked after a set number of presentations, which stops

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the ad from repeating at the same rate, to prevent frustration from viewers; see Zigmond at column 13, lines 40-47).

As to claim 69, Zigmond, Guyot and Doherty disclose (f) recording a portion of said programming stream for subsequent playback (see Zigmond at column 3, lines 9-12 and column 14, lines 1-12).

As to claim 70, Zigmond, Guyot and Doherty disclose wherein the advertisements are inserted into said programming stream as the stream is being recorded (wherein the system inserts ads into the received stream being recorded whenever the indicator appears; see Zigmond at column 14, lines 1-12 and column 15, lines 45-65).

As to claim 71, Zigmond, Guyot and Doherty disclose wherein the advertisements are inserted into said programming stream when the stream is played back (replacing older ads with newer ones in the recorded material; see Zigmond at column 14, lines 1-12).

As to claim 72, Zigmond, Guyot and Doherty disclose wherein the advertisements are inserted into said programming stream (the current video stream being received and displayed) between the time the stream is recorded and the time it is played back (when a program is recorded and played back at a later time, such as the

next day, the system would be continuing to insert ads into the received video stream during that time period; see Zigmond at column 17, lines 21-32).

As to claim 73, Zigmond, Guyot and Doherty disclose wherein the retrieved ARL is not dependent on a selection of a corresponding advertisement (see Zigmond at column 16, line 65-column 17, line 9).

As to claim 74, Zigmond, Guyot and Doherty disclose wherein the ARLs are not linked to the determined interval until the ARL is retrieved from the queue (wherein the next ads are selected independent of the upcoming interval; see Zigmond at Fig. 6; column 17, lines 21-32).

As to claim 75, Zigmond, Guyot and Doherty disclose wherein the order of the ARLs in the ordered list is independent of the substance of the advertisements corresponding to the ARLs in the queue (wherein the ads are selected based upon the advertisers desire to target particular demographics; see Zigmond at column 14, lines 35-58).

As to claim 76, Zigmond, Guyot and Doherty disclose wherein the inserted advertisement is not dependent on a selection of that advertisement (see Zigmond at column 16, line 65-column 17, line 9).

As to claim 77, Zigmond, Guyot and Doherty disclose wherein the advertisements are not linked to the detected one or more intervals until the advertisement is inserted into the detected intervals (wherein the next ads are selected independent of the upcoming interval; see Zigmond at Fig. 6; column 17, lines 21-32).

As to claim 78, Zigmond, Guyot and Doherty disclose wherein the order of the advertisements in the ordered list is independent of the substance of the advertisements in the queue (wherein the ads are selected based upon the advertisers desire to target particular demographics; see Zigmond at column 14, lines 35-58).

As to claim 79, Zigmond discloses a method of inserting advertisements into a programming stream (column 4, lines 7-15) in a communications network (column 7, lines 13-36), said method comprising:

- (a) transmitting the programming stream from a central location (Fig. 3, content provider, 50) to one or more receiving nodes (households, 56 receiving broadcast signals; column 7, lines 1-12);
- (b) storing said programming stream at one or more receiving nodes (column 14, lines 1-12);
- (d) selling locations to third parties (wherein third party advertisers contract to have their ads inserted to consumers; see Zigmond at column 8, lines 22-29);

(e) retrieving the stored programming stream from the one or more receiving nodes to create a retrieved programming stream (displaying the recorded programming; column 14, lines 1-12);

(f) detecting one or more intervals in said retrieved programming stream (through a received trigger) within which advertisements may be inserted (column 15, lines 35-44); and

(g) inserting said advertisement into said retrieved programming stream at said receiving node within said determined one or more intervals (column 15, lines 57-65).

While Zigmond discloses information determining the next advertisement to inserted (selection criteria; Fig. 6, step 110), corresponding to a subset of said plurality of receiving nodes (corresponding to a particular viewer; column 11, lines 35-49) and responsive to said determination, retrieving the next advertisement (Fig. 6, step 110; column 17, lines 23-32), wherein the order of the advertisements is independent of the timing of the determined one or more intervals (wherein ads are inserted based upon time independent information, such as program content, ratings and user preferences, habits and demographics; column 12, line 44-column 13, line 12, column 13, lines 48-58 and column 14, lines 13-58),

he fails to specifically disclose storing one or more queues, each queue associated with one or more subscribers, comprising an ordered list of advertisements and inserting said unscheduled advertisements in accordance with said ordered list and wherein the sold locations at least partially determine the order of the ARLs in said ordered list.

In an analogous art, Guyot discloses a system for displaying targeted advertising (Fig. 1; column 3, lines 13-16) wherein a queue of targeted advertisements is transmitted from a server to a subscriber system (column 5, lines 18-22 and column 4, lines 29-39) containing address locations advertisements (column 4, lines 49-50) and advertisements are then selected from the ad queue for display (column 7, lines 58-62) for the typical benefit of allowing the system to better control the output and updating of advertisements (column 3, lines 49-54, column 5, lines 18-27 and column 6, line 64-column 7, line 11).

Additionally, in an analogous art, Doherty discloses a system for displaying targeted advertising (Fig. 1; paragraph 25, lines 1-6) wherein a scheduler (140, Fig. 1) will assemble an ordered list (the schedule; paragraph 29) of references (or ARLs) pointing to advertisements (paragraph 28, lines 3-7 and paragraph 29), based upon advertisement priorities (paragraph 40), to determine the order in which advertisements are to be displayed (paragraph 38) wherein locations in the ordered list are sold to advertisers (advertisers pay a fee for their ads to be included and displayed; paragraphs 40, 46, 48 and 49) and wherein the sold locations at least partially determine the order of the ARLs in said ordered list (wherein advertisers pay to increase their ad priority and playback time; paragraphs 40, 46, 48 and 49) for the typical benefit of allowing the system provider additional revenue while allowing advertisers to control the display of their advertisement as desired (paragraphs 40, 46, 48 and 49).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond's system to include storing a queue, said

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queue comprising an ordered list of advertisement resource locators (ARLs), each of said ARLs comprising data disclosing a location of a corresponding advertisement and retrieving from said queue one of said ARLs in accordance with said order, as taught by Guyot, for the typical benefit of allowing the system to better control the output and updating of advertisements.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond and Guyot's system to include wherein the sold locations at least partially determine the order of the ARLs in said ordered list, as taught by Doherty, for the typical benefit of allowing the system provider additional revenue while allowing advertisers to control the display of their advertisement as desired.

As to claim 80, Zigmond, Guyot and Doherty disclose wherein the advertisements in the queues are independent of the substance programming stream (wherein the advertisements to be displayed are dependent upon the user's viewing habits or demographics; see Zigmond at column 13, lines 7-13, column 14 lines 13-58 and column 17, lines 21-26).

As to claim 81, Zigmond, Guyot and Doherty disclose wherein each of the one or more queues is associated with a channel in the programming stream (wherein the advertisements to be displayed, and therefore the queue holding them, are dependent

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upon, and therefore associated with, the current channel being viewed; see Zigmond at column 12, lines 47-53).

As to claim 82, Zigmond, Guyot and Doherty disclose wherein step (a) includes transmitting a plurality of channels within the programming stream and selecting one of said channels (see Zigmond at column 11, lines 15-18), and wherein step (g) includes inserting the advertisements (see Zigmond at column 15, lines 57-65) from a queue associated with the selected channel (wherein the advertisements to be displayed, and therefore the queue holding them, are dependent upon, and therefore associated with, the current channel being viewed; see Zigmond at column 12, lines 47-53) into the detected intervals in the selected channel (see Zigmond at column 15, lines 57-65).

As to claim 83, Zigmond, Guyot and Doherty disclose wherein the queues are stored at the subscriber node (see Guyot at column 4, lines 28-38).

As to claim 84, Zigmond, Guyot and Doherty disclose wherein the locations are sold to advertisers (wherein third party advertisers contract to have their ads inserted to consumers; see Zigmond at column 8, lines 22-29).

As to claim 85, Zigmond, Guyot and Doherty disclose wherein the locations are sold (selling a predetermined number of ad exposures; see Zigmond at column 8, lines 22-29) based at least partially on a repetition rate within the queue of the sold locations

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(wherein the ad is repeated a set number of times within a given time period; see Zigmond at column 13, lines 40-45).

As to claim 86, Zigmond, Guyot and Doherty disclose wherein said repetition rate is non-linear (wherein the ad is blocked after a set number of presentations, which stops the ad from repeating at the same rate, to prevent frustration from viewers; see Zigmond at column 13, lines 40-47).

As to claim 87, Zigmond, Guyot and Doherty disclose (h) recording a portion of said programming stream for subsequent playback (see Zigmond at column 3, lines 9-12 and column 14, lines 1-12).

As to claim 88, Zigmond, Guyot and Doherty disclose wherein the advertisements are inserted into said programming stream as the stream is being recorded (wherein the system inserts ads into the received stream being recorded whenever the indicator appears; see Zigmond at column 14, lines 1-12 and column 15, lines 45-65).

As to claim 89, Zigmond, Guyot and Doherty disclose wherein the advertisements are inserted into said programming stream when the stream is played back (replacing older ads with newer ones in the recorded material; see Zigmond at column 14, lines 1-12).

As to claim 90, Zigmond, Guyot and Doherty disclose wherein the advertisements are inserted into said programming stream (the current video stream being received and displayed) between the time the stream is recorded and the time it is played back (when a program is recorded and played back at a later time, such as the next day, the system would be continuing to insert ads into the received video stream during that time period; see Zigmond at column 17, lines 21-32).

As to claim 91, Zigmond, Guyot and Doherty disclose wherein the inserted advertisement is not dependent on a selection of that advertisement (see Zigmond at column 16, line 65-column 17, line 9).

As to claim 92, Zigmond, Guyot and Doherty disclose wherein the advertisements are not linked to the detected one or more intervals until the advertisement is inserted into the detected intervals (wherein the next ads are selected independent of the upcoming interval; see Zigmond at Fig. 6; column 17, lines 21-32).

As to claim 93, Zigmond, Guyot and Doherty disclose wherein the order of the advertisements in the ordered list is independent of the substance of the advertisements in the queue (wherein the ads are selected based upon the advertisers desire to target particular demographics; see Zigmond at column 14, lines 35-58).

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3. Claims 3-6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zigmond, Guyot and Doherty as applied to claims 2, 20, 39 and 51 above, and further in view of Bhagavath et al. (Bhagavath) (6,119,098) (of record).

As to claim 3, while Zigmond, Guyot and Doherty disclose indicators for upcoming avails and ARLs corresponding to advertisements, they fail to specifically disclose identifying a duration of said avail and identifying a duration of said advertisement.

In an analogous art, Bhagavath discloses a system for insertion advertisements into media (column 1, lines 65-67 and column 2, lines 1-10) which will provide media metadata (Fig. 10) indicating intervals when ads are to be inserted and the duration of the ad interval (column 6, lines 44-48) and ad metadata (Fig. 9A) defining a duration of an ad (column 6, lines 25-31) and wherein a particular ad is chosen by comparing the two types of data (column 6, lines 18-24) for the typical benefit of ensuring that a selected ad will fit into a particular ad slot.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Zigmond, Guyot and Doherty's system to include identifying a duration of said avail and identifying a duration of said advertisement, as taught by Bhagavath, for the typical benefit of selecting an advertisement of appropriate duration for any particular ad slot.

As to claim 4, Zigmond, Guyot, Doherty and Bhagavath disclose wherein said order of said ARLs in said queue is based at least partially on said duration of said

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advertisements relative to said duration of avails detected in said stream (based upon a comparison of an ad duration and an ad slot duration; see Bhagavath at column 6, lines 18-21, 29-31 and 44-48).

As to claim 5, Zigmond, Guyot, Doherty and Bhagavath disclose

(h) determining at least one characteristic of a viewer of said television programming (determining user preferences; see Zigmond at column 11, lines 13-19 and lines 24-30); and

(i) ordering said queue based at least partially on said at least one characteristic (wherein the ad selections are based upon the viewer data; see Zigmond at column 11, lines 13-19 and lines 42-49).

As to claim 6, Zigmond, Guyot, Doherty and Bhagavath disclose wherein said at least one characteristic is based on the content of the programming stream prior to said interval (wherein the determined user characteristic at any particular interval is inherently based on viewing habits prior to the interval; see Zigmond at column 11, lines 13-18).

As to claim 9, Zigmond, Guyot, Doherty and Bhagavath disclose

(h) receiving at said receiving node instructions (selection rules and parameters; see Zigmond at column 11, lines 66-67 and column 12, lines 1-14 and lines 25-32)

dictating how to order said ARLs in said queue (dictating the selection of advertisements; see Zigmond at column 11, lines 35-49); and

wherein step (c) includes ordering said queue in accordance with said instructions (wherein the advertisements are selected from the queue for use based upon the context info for the ads; see Guyot at column 4, lines 28-67 and column 7, lines 58-62).

Response to Arguments

4. Applicant's arguments filed 03/06/06 have been fully considered but they are not persuasive.

a. In response to applicant's argument on page 14, applicant is incorrect in asserting that Zigmond was relied upon to disclose "selling locations in said queues". As indicated in the previous action and in the rejections above, Zigmond was indicated as disclosing "selling locations to third parties" as Zigmond specifically discloses wherein advertisers are charged to have their ads inserted into the video stream. As Zigmond was not indicated as specifically disclosing a "queue" he was never relied upon to disclose this feature, as this specific feature is a result of the *combination* of Zigmond with Guyot.

b. In response to applicant's arguments against the references individually, in this case indicating that neither Zigmond or Guyot disclose "selling locations in said queues", one cannot show nonobviousness by attacking references

individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

More specifically, Zigmond clearly discloses wherein advertisers are charged to have their ads displayed to viewers (see Zigmond at column 8, lines 22-29). Guyot discloses wherein the advertisements are arranged into a queue indicating the order in which ads are to be displayed (column 7, lines 58-62). It is a direct result of the combination of Guyot with Zigmond that results in “selling locations in said queues”, as the advertisers are charged to have their ads displayed, and thus included in the queue of upcoming ads, which meets the current claim limitations.

c. In response to applicant's arguments, on page 15, that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., selling *specific* locations in the queue, thereby allowing advertisers to purchase the advertising rights to the one or more *particular* locations, are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The current claim limitations only require that locations within the queues are sold, which is clearly indicated above as being taught by the combination of

Zigmond and Guyot. The limitation of allowing advertisers to select and purchase a specific location in the queue is not required by the current claim language.

d. Applicant's arguments with respect to claims 1, 60 and 79, in regards to the limitation of "the sold locations at least partially determining the order of the ARLs in said ordered list" have been considered but are moot in view of the new ground(s) of rejection.

e. In response to applicant's argument, on page 16, that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Guyot discloses the use of an ad queue which allows the system to better control the output and updating of advertisements (see Guyot at column 3, lines 49-54, column 5, lines 18-27 and column 6, line 64-column 7, line 11).

Furthermore, it is noted that applicant has been repeatedly provided with further benefits, known in the art, of utilizing a queue of advertisements, as such

allows the system more time to properly process and prepare the ads for display (see Doherty at paragraph 28, lines 1-11 and paragraph 38, lines 4-9).

Finally, Zigmond and Guyot both disclose related systems, for targeted advertising (see Zigmond at column 4, lines 7-52 and Guyot at column 1, lines 56-65), integrated with in a television system (see Zigmond at column 6, lines 7-47 and Guyot at column 11, lines 3-15) utilizing web-tv (see Zigmond at column 7, lines 37-49 and Guyot at column 11, lines 3-24). Therefore, applicant's arguments are not persuasive.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in

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such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Typed or printed name of person signing this certificate:

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Signature: _____

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James Sheleheda
Patent Examiner
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JS


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